

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 222 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

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SATISHKUMAR LOVEKUMAR UPADHYAY

Versus

COMMISSIONER OF POLICE

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Appearance:

MR SATISH R PATEL for Petitioner

Mr. Samir Dave, A.G.P. for Respondent No. 1, 2, 3

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CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 22/09/1999

ORAL JUDGEMENT

Heard learned Advocate Mr. Satish R. Patel for the petitioner and learned A.G.P. Mr. Samir Dave for the respondents nos.1,2 and 3.

1. The detention order dated 23-11-1998 passed by the respondent no.1-the Commissioner of Police, Ahmedabad City against the petitioner in exercise of powers

conferred under Section 3(1) of the Gujarat Prevention of Antisocial Activities, 1985 ("PASA" for short) is challenged in the present petition under Article 226 of the Constitution.

2. The petitioner has produced the impugned order and the committal order vide Annexdure "A" & "B" while the grounds of detention supplied to the petitioner as required under Section 9(1) of "PASA" has been produced by the petitioner at Annexure "C" of the compilation.

3. Perusal of the grounds of detention indicate that four criminal cases in respect to offences made punishable under the Prohibition Act are registered against the petitioner and foreign made liquor has been seized in each case. The cases arising from CR no.5148/97 and 5200/98 are pending in the Court for trial while the two other cases are pending investigation.

4. Over and above the material in respect to said four criminal cases, two witnesses on assurance of anonymity have supplied information about the petitioner vide statements dated 21-11-1998 and 11-11-1998.

5. On the basis of the said material, the detaining authority came to the conclusion that the petitioner is a "bootlegger" within the meaning of Section 2(b) of "PASA" and his activities are causing prejudicial affect to the maintenance of public order. That resort to general provisions of law not being sufficient to prevent the petitioner from continuing his nefarious activities, the impugned order has been passed.

6. The petitioner has challenged the order on numerous grounds. It has been contended that vide representation dated 27-11-1999, copy of which is produced at Annexure "J", the petitioner has claimed documents from the respondents like report of chemical analyst and statements of witnesses, namely., Jaswantsingh, Rajendrasingh, P.I. N.B. Nagori, PSI C.P. Parmar, PSI B.D. Zala, Police Constables Lalaji Hiraji etc. It is contended on behalf of the petitioner that the respondents have failed to reply to the said representation and failed to supply the said documents. That thereby, the petitioner-detenu was prevented from making effective representation against his detention which has violated his fundamental right guaranteed under Article 22(5) of the Constitution, and as such, the continued detention of the petitioner has become illegal. It appears that the petitioner has amended the petition on 19-8-1999 and has added additional grounds 19A and 19B

in the petition in respect to said challenge.

7. That the detaining authority-respondent no.1 has filed affidavit-in-reply wherein no explanation worth the name is given as to what has happened to the representation made by the petitioner-detenu. However, learned A.G.P. Mr. Samir Dave on instruction and verification from original file had stated at the Bar that the representation of the petitioner-detenu was rejected on 6-8-1999 and though the detaining authority was called upon to supply the documents claimed by the petitioner vide his representation, the file does not disclose any information whether the same has been supplied to the petitioner or not.

8. In the absence of any material to rebut the averments made in the petition that respondents have failed to supply the vital documents to make effective representation, it has to be held that such documents are not supplied to the petitioner, and thereby, the petitioner was prevented from making effective representation which amounts to breach of constitutional imperative, and as such, continued detention of the petitioner is illegal and the petition deserves to be allowed.

9. On the basis of the aforesaid discussion, the petition is allowed. The impugned order dated 23-11-1998 passed by the respondent no.1-the Police Commissioner, Ahmedabad City, against the petitioner is hereby quashed and set aside. The petitioner-detenu-Satishkumar Lavkumar Upadhyay is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly.

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